

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services))))))	WT Docket No. 10-112

COMMENTS OF AMERICAN MESSAGING SERVICES, LLC

I. INTRODUCTION AND SUMMARY

American Messaging Services, LLC (“American Messaging”) submits these comments on the Commission’s *Further Notice of Proposed Rulemaking* (“Further Notice”)¹ proposing additional buildout requirements for geographic area wireless licensees. New construction requirements in subsequent license terms are unwarranted and unjustified for geographic area messaging licenses, and should not be adopted.

American Messaging is one of the largest messaging companies in the United States, delivering more than three million messages per day to pagers, smart phones, tablets and personal computers. It provides service to approximately 800,000 subscribers of more than 1,400 major health care, public safety and first responder clients across the U.S. The company holds several hundred geographic area licenses and more than a thousand site-based narrowband

¹ *Amendment of Parts 1, 22, 24, 27, 74, 80, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 10-112, FCC 17-105 (rel. Aug. 3, 2017) (“*Second Report and Order*” and “*Further Notice*”).

licenses, including licenses in the paging and radiotelephone service and the narrowband personal communications and private land mobile services.

The goal of the proposed new buildout rules is to narrow “a real and growing digital divide between rural and urban areas” by driving further deployment of mass market wireless broadband services to consumers who live in underserved rural areas.² Because, however, paging and messaging services today do not provide mass market broadband services, placing additional burdensome requirements on them will do nothing to further the Commission’s goal. More stringent buildout rules for messaging licenses would thus conflict with long-standing FCC policy to refrain from adopting regulations unless they are narrowly tailored and necessary to solve an existing problem.

Furthermore, these requirements would impose onerous yet unwarranted burdens on messaging licensees, who would be compelled to meet new mass market population coverage levels even though messaging services have transitioned from being primarily mass market paging services to a more geographically targeted M2M service for businesses, hospitals, first responder and public safety customers.

II. NEW CONSTRUCTION REQUIREMENTS ON MESSAGING LICENSES WILL NOT ADVANCE THE COMMISSION’S STATED OBJECTIVE.

The Commission acknowledges that it has issued a wide variety of geographic licenses, subject to different service and technical rules, and seeks comment on whether to apply any new buildout rules to all geographic licensees or “whether certain types of licenses should be

² *Further Notice* at ¶¶ 99-100.

excluded.”³ Geographic licenses used to provide messaging service should be excluded from any new rules.

The Commission’s goal in this proceeding is to “narrow existing gaps” in mass market wireless service that leaves the public in some rural areas without access to wireless broadband.⁴ But American Messaging does not provide broadband services, only narrowband paging and messaging services. Moreover, its primary focus has evolved from a mass market consumer service to more targeted service to enterprise and public safety customers – chiefly hospitals and first responders as well as certain other businesses. Requiring it to meet ever-increasing buildout obligations would not serve the stated purpose of this proceeding to expand broadband service to the public in rural areas. For those reasons, the Commission should decline to extend the reach of any buildout requirements to paging or messaging companies like American Messaging.

III. STRICTER BUILDOUT REQUIREMENTS WOULD UNJUSTIFIABLY FORCE UNECONOMIC BUILDOUT.

As the Commission has acknowledged, there are some rural areas where it is uneconomic to build networks. Requiring existing licensees to meet additional construction requirements could, however, result in multiple, overlapping networks in areas where it is not economic to build even one. Even so, increasing the buildout requirements may not drive service to unserved areas. Increasing the existing population or geographic coverage minimum for a particular license is not linked to new rural coverage and does not require it. Thus, additional requirements could result in overlapping networks in some license areas while the unserved areas remain unserved.

³ *Id.* at ¶ 110.

⁴ *Id.* at ¶ 100.

Additional requirements would also impact the way in which licensees spend their resources. Licensees have limited capital. Requiring them to spend that capital in specific areas will result in a decrease in spending in other areas that may need it more urgently. For example, a costly build in an uneconomic rural area, where there are multiple buildouts occurring as a result of the rules, would divert capital away from densification in urban or more densely populated areas.

Furthermore, imposing more stringent coverage requirements on all licensees ignores the significant differences between the various wireless services and the customers they serve. In the case of messaging services, requiring them to build duplicative networks where it is not necessary to serve customers is not just uneconomic, but harmful. American Messaging already provides extensive coverage in both urban and rural areas to its customer base. Existing coverage rules require geographic paging licensees to cover one third of the population after three years and two thirds of the population after five years or, in the case of narrowband personal communications service licenses, to cover 37.5 percent of the population after five years and 75 percent after ten years.⁵ These rules were adopted at a time when messaging was primarily a mass market service. However, the demand for these services has evolved, and messaging services are now primarily targeted at enterprise, first responder and public safety users and consist largely of M2M communications. Adherence to broad population-based construction requirements adopted decades ago is no longer appropriate. Doubling down on these rules and expanding them into subsequent license terms not only makes no sense in the context of how the service has evolved, but would also be financially onerous if not impossible

⁵ 47 C.F.R. §§ 22.503, 24.103 (licensees could, alternatively, demonstrate substantial service).

to meet for messaging providers who do not have the scale and revenues needed for such an extensive buildout.

IV. THE COMMISSION HAS OTHER ONGOING PROCEEDINGS THAT ARE MORE NARROWLY TAILORED TO ACHIEVE THE COMMISSION’S GOALS.

The FCC has several other ongoing proceedings, such as the Mobility Fund Phase II (“MF-II”) auction proceeding and two infrastructure proceedings, that are more narrowly tailored to enable rural Americans to access wireless broadband. The MF-II auction will direct \$4.53 billion for deployment of 4G broadband to targeted areas that either lack coverage altogether, or lack 5 megabytes per second download speeds, and auction winners will have specific construction obligations in unserved areas.⁶ The Commission is also considering actions it can take to lower the costs and regulatory barriers to infrastructure deployment with the specific purpose of driving expanded wireless deployment nationwide.⁷ American Messaging encourages the Commission to focus on those proceedings, and to allow them to achieve their intended effects before considering broad mandates as proposed in the Further Notice. Finally, many wireless licenses are also still in their initial buildout terms, meaning that many licensees have not yet had to meet either initial or final buildout benchmarks. The Commission has no reason to believe the initial rules it adopted will fall short in encouraging rural deployment.

As is further described below, existing license holders should instead be allowed to opt-in to enhanced construction requirements on a voluntary basis in exchange for a regulatory benefit, such as an extended license term. Licensees should be allowed to make an election when they seek renewal, on a license-by-license basis.

⁶ *Connect America Fund: Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6289 ¶ 14 (2017).

⁷ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017).

V. THE COMMISSION SHOULD USE REGULATORY AND ECONOMIC INCENTIVES TO ENCOURAGE GREATER SERVICE IN RURAL AREAS.

Rather than penalizing licensees, the Commission should use an incentive-based approach to encourage deployment. Extending the license term of licensees that voluntarily satisfy enhanced construction requirements would provide a powerful incentive for all licensees. As the Commission has recognized, extended license terms promote greater certainty for carriers, and as a result, more long-term investment and deployment of infrastructure.⁸ This will result in expanded coverage into unserved areas.

The Commission also should consider adopting a weighted approach to construction requirements, with rural areas being given more weight and counting more toward satisfaction of first-term buildout obligations than construction in suburban or urban areas. The Commission also can continue to use economic incentives, such as rural service provider and tribal land bidding credits, and Mobility Fund subsidies, such as those being used in the MF-II auction, to encourage coverage in rural areas.

Finally, at the very least, the Commission should not impose new construction requirements on existing licenses. Those licensees acquired that spectrum in reliance on the current buildout rules. It would be unfair to require those licensees to face penalties (whether financial or otherwise) if they do not meet new obligations, even though they have met their initial construction requirements. In particular, requiring licensees to forfeit part or all of their licenses where they have deployed service would ultimately punish their subscribers and disrupt any existing network in those affected areas. That would conflict with the Commission's ultimate goal of expanding service to currently unserved or underserved areas.

⁸ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8077-78 ¶ 176 (2016).

VI. CONCLUSION

For the above reasons, the Commission should not adopt any new buildout rules for subsequent license terms that would apply to geographic messaging licensees. Such rules would generate no benefits to the deployment of mass market wireless broadband services, while imposing onerous burdens on messaging providers such as American Messaging. The Commission should instead focus on providing voluntary economic and regulatory incentives for broadband licensees to encourage greater deployment to rural areas.

Respectfully submitted,

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